

1 WILLIAM A. ISAACSON (*Pro hac vice*)  
2 (wisaacson@bsfllp.com)  
3 STACEY K. GRIGSBY (*Pro hac vice*)  
4 (sgrigsby@bsfllp.com)  
5 NICHOLAS A. WIDNELL (*Pro hac vice*)  
6 (nwidnell@bsfllp.com)  
7 BOIES SCHILLER FLEXNER LLP  
8 1401 New York Avenue, N.W., Washington, DC 20005  
9 Telephone: (202) 237-2727; Fax: (202) 237-6131

7 RICHARD J. POCKER #3568  
8 (rpocker@bsfllp.com)  
9 BOIES SCHILLER FLEXNER LLP  
10 300 South Fourth Street, Suite 800, Las Vegas, NV 89101  
11 Telephone: (702) 382-7300; Fax: (702) 382-2755

10 DONALD J. CAMPBELL #1216  
11 (djc@campbellandwilliams.com)  
12 J. COLBY WILLIAMS #5549  
13 (jcw@campbellandwilliams.com)  
14 CAMPBELL & WILLIAMS  
15 700 South 7th Street, Las Vegas, NV 89101  
16 Telephone: (702) 382-5222; Fax: (702) 382-0540

15 *Attorneys for Defendant Zuffa, LLC, d/b/a*  
*Ultimate Fighting Championship and UFC*

17 **UNITED STATES DISTRICT COURT**  
18 **DISTRICT OF NEVADA**

20 Cung Le, Nathan Quarry, Jon Fitch, Brandon  
21 Vera, Luis Javier Vazquez, and Kyle  
22 Kingsbury on behalf of themselves and all  
23 others similarly situated,

24 Plaintiffs,

v.

25 Zuffa, LLC, d/b/a Ultimate Fighting  
26 Championship and UFC,

27 Defendant.

28 Case No.: 2:15-cv-01045-RFB-(PAL)

**ZUFFA, LLC'S MOTION TO SEAL  
PLAINTIFFS' OPPOSITION TO  
ZUFFA'S MOTION FOR SUMMARY  
JUDGMENT (ECF NO. 596)**

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16	<i>In re Elec. Arts, Inc.</i> 298 F. App'x 568 (9th Cir. 2008) .....	2, 8, 9, 15
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20	<i>Kamakana v. City &amp; Cty. Of Honolulu</i> 447 F.3d 1172 (9th Cir. 2006).....	1, 11
21	<i>Nixon v. Warner Comms., Inc.</i> 435 U.S. 589 (1978).....	1
23	<i>Selling Source, LLC v. Red River Ventures, LLC</i> No. 2:09-cv-01491-JCM-GWF, 2011 WL 1630338 (D. Nev. Apr. 29, 2011).....	9, 12, 15
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## INTRODUCTION

Zuffa, LLC (“Zuffa”) respectfully requests that the Court order the Clerk of Court to file under seal those documents conditionally lodged under seal as part of Plaintiffs’ Opposition to Zuffa’s Motion for Summary Judgment (ECF No. 596) (“Plaintiffs’ Opposition”). Zuffa makes this request pursuant to the Stipulated Order governing the confidentiality of documents entered by the Court on February 10, 2016, ECF No. 217 (“Protective Order”).

Zuffa’s sealing requests are narrowly tailored and comport with the Ninth Circuit’s “compelling reasons” standard governing the sealing of documents attached to dispositive motions. Zuffa has worked diligently to narrow the scope of its sealing requests. As part of that work, Zuffa hereby files 25 exhibits publicly, in whole or in part, that Plaintiffs conditionally lodged under seal.

## **LEGAL STANDARD**

Documents filed in connection with a dispositive motion, including summary judgment, may be filed under seal if “compelling reasons” exist to seal those documents. *Kamakana v. City & Cty. Of Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006). While the public has a “general right” to access judicial records, the Ninth Circuit has explained that “access to judicial records is not absolute.” *Id.* at 1178. The “compelling reasons” standard requires a party to “articulate compelling reasons supported by specific factual findings that outweigh the general history of access and public policies favoring disclosure.” *Id.* at 1178-79 (citations and quotation marks omitted).

The “compelling reasons” standard requires a party to “articulate compelling reasons supported by specific factual findings that outweigh the general history of access and the public policies favoring disclosure.” *Kamakana*, 447 F.3d at 1179 (citations and quotation marks omitted). “Compelling reasons” have included preventing: disclosure of “sources of business information that might harm a litigant’s competitive standing,” *Nixon v. Warner Comms., Inc.*, 435 U.S. 589, 598 (1978) (citations omitted); the “release of trade secrets,” *Kamanaka*, 447 F.3d at 1179 (citing *Nixon*, 435 U.S. at 598); and “the release of . . . information [that] would result in

1 an invasion of the privacy interests of third parties.” *GoDaddy.com LLC v. RPost Comms. Ltd.*,  
 2 No. CV-14-00126-PHX-JAT, 2016 WL 1158851, at \*5 (D. Ariz. Mar. 24, 2016), on  
 3 reconsideration in part, No. CV-14-00126-PHX-JAT, 2016 WL 1274120 (D. Ariz. Mar. 31,  
 4 2016).

5 The Ninth Circuit has held that certain “confidential and commercially sensitive  
 6 information,” including licensing agreements containing “pricing terms, royalty rates, and  
 7 guaranteed minimum payment terms,” meet the “compelling reasons” standard and are properly  
 8 filed under seal. *In re Elec. Arts, Inc.*, 298 F. App’x 568, 569 (9th Cir. 2008) (“Electronic Arts”).  
 9 The Ninth Circuit noted that these categories of information “plainly fall[] within the definition of  
 10 ‘trade secrets’” and explained that “a trade secret may consist of any formula, pattern, device or  
 11 compilation of information which is used in one’s business, and which gives him an opportunity  
 12 to obtain an advantage over competitors who do not know or use it.” *Id.* (citations and quotation  
 13 marks omitted)

#### 14 ARGUMENT

15 As described below, Zuffa seeks to seal various documents that meet the compelling  
 16 reasons standard for sealing. The categories of documents Zuffa seeks to seal are described  
 17 below in Tables A and B:

18 <b>Table A: Exhibits Zuffa Seeks to File under Seal</b>	
19 <b>Type of Material Zuffa Seeks to Seal</b>	20 <b>Exhibits or Portions of Plaintiffs’ Opposition</b>
21 Documents or portions thereof 22 describing or providing highly 23 confidential and trade secret 24 information on Zuffa’s contractual 25 clauses and the trade secret internal Zuffa. 26 27 28	21, 72:2-73:25, 210:1-213:1, 213:7-13, 213:20-220:7, 221:6-14, 221:19-25, 235:11-241:8, 244:15-245:25, 254:1-258:15, 258:20-264:7, 270:8-272:11; Ex. 13, Hendrick Depo, 362:1-385:23; Ex. 14, Epstein Depo, 22:19-23:2, 32:3-15; Ex. 18, Fitch Depo, 114:3-4, 114:6-7, 115:11-12, 115:22-23, 115:25-116:2, 116:18- 20, 118:2-10, 118:17-20, 119:3-4, 119:6-8, 121:1-10, 122:15-18, 122:22-25, 123:24-25, 124:14-16218:15- 22, 219:8-25, 224:6-8, 226:3-4, 226:7-12, 226:15-20, 227:15; Ex. 20, Kingsbury Depo, 90:1-93:14, 100:2- 101:25; Ex. 24, Shelby Depo, 114:1-117:25, 129:23- 130:24, 158:1-158:25, 208:1-210:21, 215:3-216:23, 217:7-9, 217:20-25; Ex. 26, Aronson Depo, 86:20-25,

**Table A: Exhibits Zuffa Seeks to File under Seal**

<b>Type of Material Zuffa Seeks to Seal</b>	<b>Exhibits or Portions of Plaintiffs' Opposition</b>
	88:5-23, 89:13-93:16; Ex. 28, Epstein Depo, 207:3-211:18, 216:14-217:2; Ex. 29, Silva Depo, 186:4-12, 270:12-271:17, 275:9-276:18, 277:9-15, 382:16-385:21, 392:16-393:7, 410:15-21, 412:7-413:22, 412:6-17, 426:6-12, 456:6-9; Ex. 32, White Depo, 343:10-24, 346:15-347:4, 389:18-393:22, 397:16-400:25 Ex. 34, Singer Depo, 253:6-254:9, 255:6-261:11, 294:10-295:4; Ex. 36, Topel Depo, 110:1-111:9, 111:15-115:9, 117:7-118:7, 121:12-122:23; Ex. 37, Deposition of Robert Topel (December 6, 2017) (excerpted), 301:7-302:15, 302:19-303:3, 347:9-25, 349:12-351:1, 353:3-9, 354:4-8, 354:12-15, 355:8-16, 355:25-356:2, 356:25-357:3, 399:4-400:23, 401:21-409:12, 411:10-414:5;; Ex. 45, ZFL-1081154; Ex. 50, ZFL-1404974; Ex. 52, ZFL-1472158 (excerpted); Ex. 56, ZFL-1873428; Ex. 57, ZFL-1874637; Ex. 61, ZFL-2020850; Ex. 90, ZUF-00296965; Ex. 122, Hendrick 30(b)(6) Ex. 2 (excerpted); Ex. 123, Hendrick 30(b)(6) Ex. 24 (ZFL-2642993); Ex. 133, J. Silva Ex. 45 (ZFL-2536288); Plaintiffs' Opposition 6:10-13 & nn.15-18, 7:1-2 & nn.19-20, 8:17 & n.22, 9 n.26, 12:5-6, 26:11, 30 n.87, 34:22-23, 35 n.96
Documents or portions thereof describing or providing event-level financial information or highly confidential internal valuation or analysis, information or derived from or quoting from such information, such that trade secret information would be revealed if filed publicly and significant competitive harm would likely result.	Ex. 12, Hendrick Depo 267:24-269:7; Ex. 13, Hendrick Depo, 387:7-23, 388:15-389:25; Ex. 14, Epstein Depo, 30:20-33:1, 109:2-114:8, 172:14-174:18; Ex. 22, Fertitta Depo, 286:20-289:5; Ex. 31, White Depo, 143:15-152:10, 223:9-25; Ex. 32, White Depo, 291:25-293:10, 293:15-294:13; Ex. 33, White Depo, 538:1-9, 540:9-16, 544:3-548:11, 548:16-549:9, 549:13-25, 554:1-10, 554:15-556:9, 559:12-560:4, 560:8-561:13, 562:17-566:25, 567:6-569:25; Ex. 36, Topel Depo, 156:20-157:16, 235:6-240:3, 240:10-242:15, 245:23-247:20, 249:11-253:2, 254:7-22; Ex. 47, ZFL-1240584; Ex. 48, ZFL-1384297 (excerpted); Ex. 63, ZFL-2277058 (excerpted); Ex. 64, ZFL-2279086 (excerpted); Ex. 65, ZFL-2283306; Ex. 78, ZFL-2700585 (excerpted); Ex. 88, ZUF-00162329 (excerpted); Ex. 97, DB-ZUFFA-00006389 (excerpted); Ex. 98, DB-ZUFFA-00006528 (excerpted); Ex. 99, DB-ZUFFA-00006631 (excerpted); Ex. 100, DB-ZUFFA-00006712 (excerpted); Ex. 101, DB-ZUFFA-00014046 (excerpted); Ex. 102, DB-ZUFFA-00020303; Ex. 104, DB-ZUFFA-00056900 (excerpted); Ex. 105, DB-ZUFFA-00057908 (excerpted); Ex. 117,

**Table A: Exhibits Zuffa Seeks to File under Seal**

<b>Type of Material Zuffa Seeks to Seal</b>	<b>Exhibits or Portions of Plaintiffs' Opposition</b>
	WME_ZUFFA_00005368 (excerpted); Ex. 137, White Ex. 117 (ZFL-0000221) (excerpted); Plaintiffs' Opposition 2:25, 4:5 & n. 6, 6 nn.15-16, 9:12-14 n.29, 12:5-6, 12:9-11, 13:2-7, 15:10-11, 15:15-16, 16:10-11, 16:14-15, 16:17-18 & nn. 46 & 48, 17:2, 18 n.55, 26:11, 30 n.87, 34:22-23, 43:10-11, 43:13-14, 43:16-17, 43:18-19 & n.116, 44:3, 45 n.123
Documents or portions thereof describing or providing detailed information on trade secret business information and highly sensitive internal strategy information, disclosure of which would be very likely to result in unjustified competitive harm.	Ex. 12, Hendrick Depo, 234:1-25, 241:14-20, 242:3-244:14, 265:5-9, 265:17-21, 266:4-267:1 269:17-21, 272:19-23, 273:9-25; Ex. 14, Epstein Depo, 22:1-28:6, 28:20-30:8, 33:7-37:23, 106:1-107:21, 115:17-117:25, 134:1-136:12, 136-22-143:1, 143:3-143:14, 143:23-145:25, 166:1-172:1, 175:3-177:25; Ex. 15, Batchvarova Depo, 30:1-36:11, 36:23-37:1, 37:9-41:25; Ex. 22, Fertitta Depo, 32:9-33:25, 76:21-77:10, 77:20-80:5, 80:13-85:25, 286:1-9, 286:20-290:14, 292:7-14, 294:1-295:15, 295:23-297:17; Ex. 24, Shelby Depo, 78:1-79:4, 118:9-121:25, 123:18-124:3, 124:19-126:2, 126:9-129:22, 132:22-133:17, 161:23-162:2, 162:13-163:10, 163:19-164:25, 176:22-178:25, 179:25-181:6, 181:20-21, 183:19-25, 184:21-25, 185:9-21, 186:3-8, 186:28-20, 190:29-192:10, 194:8-25, 195:3-4, 197:14-15, 207:20-21; Ex. 25, Mulkey Depo, 86:1-24, 87:8-97:25, 214:1-215:20, 216:13-219:8, 220:5-223:14, 225:5-25; Ex. 26, Aronson Depo, 95:10-96:3; Ex. 27, Deutsche Bank Depo, 54:1-77:25, 114:1-129:25; Ex. 28, Epstein Depo, 207:3-211:18, 216:14-217:2; Ex. 29, Silva Depo, 38:19-22, 39:7-17, 39:25-40:6, 40:13-23, 42:7-13, 43:19-22, 1130:10-21, 139:20-23, 143:7-9, 157:5, 170:16, 171:16, 177:10-11, 180:4-10, 183:4-9, 303:22-304:20, 304:22-306:2, 311:6-7, 311:17-19, 313:7-11, 316:9-25, 317:18-23, 398:13-22, 399:10-15, 399:23-400:4, 401:2-19, 405:12-19, 423:21-424:3, 468:12; Ex. 30, Coker Depo, 85:3-23, 86:19-87:9, 93:9-98:12, 113:23-114:17, 117:11-18, 124:17-125:25, 141:19-25; Ex. 31, White Depo, 142: 10-143:9, 153:2-154:8, 155:10-157:4, 158:13-162:16, 169:15-170:3, 186:5-187:10, 201:6-25, 214:2-215:5, 226:7-227:21, 228:13-233:23, 236:13-237:21, 242:5-243:19; Ex. 32, White Depo, 304:14-307:19, 334:12-336:5, 348:17-350:17, 351:2-354:5, 356:23-357:17, 385:8-388:24, 445:1-446:9, 447:7-449:7, 451:7-11, 453:20-454:12; Ex. 36, Topel Depo, 28:1-22, 47:10-19, 244:9-245:14; Ex. 37, Deposition of Robert Topel (December 6, 2017)

**Table A: Exhibits Zuffa Seeks to File under Seal**

Type of Material Zuffa Seeks to Seal	Exhibits or Portions of Plaintiffs' Opposition
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**Table A: Exhibits Zuffa Seeks to File under Seal**

<b>Type of Material Zuffa Seeks to Seal</b>	<b>Exhibits or Portions of Plaintiffs' Opposition</b>
Documents or portions thereof describing or providing information designated highly confidential by a third-party, containing third party trade secrets and/or private third-party information, disclosure of which would be very likely to cause significant commercial harm or personal invasion of privacy. These types of documents often include highly sensitive third-party financial information, disclosure of which would be likely to cause competitive harm.	Ex. 20, Kingsbury Depo, 93:24-94:20, 94:25-95:3; Ex. 21, Lappen Depo, 149:15-25; Ex. 23, KnappDepo, 67:10-68:2, 127:9-128:3, 128:21-129:5, 131:1-132:25, 134:3-136:16, 137:7-137:25, 222:28-24; Ex. 24, Shelby Depo, 167:11-168:3, 168:19-21, 198:7-12; Ex. 26, Aronson Depo, 81:8-83:10, 85:7-18; Ex. 27, Deutsche Bank Depo, 54:1-77:25, 114:1-129:25; Ex. 29, Silva Depo, 38:19-22, 39:7-17, 39:25-40:6, 40:13-23, 46:9-19, 47:5-6, 47:9-12, 55:11-18, 56:14-15, 57:11-12, 57:18-19, 57:24-58:5, 58:10-15, 58:20-59:2, 59:5-17, 60:4-11, 75:18-24, 76:22-24, 77:19-23, 78:9-11, 88:15-19, 100:16-18, 104:9-12, 151:22-24, 152:8-9, 249:21-22; Ex. 36, Topel Depo, 26:2-27:7; Ex. 37, Deposition of Robert Topel (December 6, 2017) (excerpted), 360:15-361:5, 362:19-363:12, 389:10-19, 410:1-6, 436:3-442:19, 445:3-447:12, 482:9-484:21, 384:3-10; Ex. 40, ZFL-0827903; Ex. 41, ZFL-0872344; Ex. 42, ZFL-0872351; Ex. 46, ZFL-1096310; Ex. 55, ZFL-1872579; 59, ZFL-1904802; Ex. 66, ZFL-2461790; Ex. 68, ZFL-2469204; Ex. 69, ZFL-2469208; Ex. 75, ZFL-2535654; Ex. 77, ZFL-2544572; Ex. 95, CG-UFC-00000005 (excerpted); Ex. 96, DB-ZUFFA-00006237 (excerpted); Ex. 97, DB-ZUFFA-00006389 (excerpted); Ex. 98, DB-ZUFFA-00006528 (excerpted); Ex. 99, DB-ZUFFA-00006631 (excerpted); Ex. 100, DB-ZUFFA-00006712 (excerpted); Ex. 101, DB-ZUFFA-00014046 (excerpted); Ex. 102, DB-ZUFFA-00020303; Ex. 103, DB-ZUFFA-00024678 (excerpted); Ex. 104, DB-ZUFFA-00056900 (excerpted); Ex. 105, DB-ZUFFA-00057908 (excerpted); Ex. 106, MDYS ZFF 000005; Ex. 107, MDYS ZFF 000039; Ex. 108, MDYS ZFF 000058; Ex. 109, MDYS ZFF 000074; Ex. 110, MDYS ZFF 000082; Ex. 111, MDYS ZFF 000103 (excerpted); Ex. 112, RAIN0000019 (excerpted); Ex. 113, RAIN0018791 (excerpted); Ex. 114, RAIN0020542 (excerpted); Ex. 115, RAIN0020633 (excerpted); Ex. 116, WME_ZUFFA_00001150 (excerpted); Ex. 118, WME_ZUFFA_00013978; Ex. 119, WME_ZUFFA_00031950; Ex. 128, J. Silva Ex. 16; Plaintiffs' Opposition 4 n.4, 7:8-9, 13:11-12, 15:10-11, 15:15-16, 15:17-18, 16 n.46, 17:2, 25:6-7 & n.71, 40 n.109

**Table B: Expert Reports Zuffa Seeks to File under Seal**

<b>Ex.</b>	<b>Description</b>	<b>Justification</b>
1	Expert Report of Hal J. Singer, Ph.D. (August 31, 2017)	The report contains highly confidential information regarding Zuffa's athlete contracts and strategies, event-level financial and other information, trade secret strategy information, and third-party confidential information. Release of this information is likely to cause Zuffa and third parties significant competitive harm. The Court previously granted Zuffa's motion to seal this report (ECF No. 533).
2	Rebuttal Expert Report of Hal J. Singer, Ph.D. (January 12, 2018)	The report contains highly sensitive and confidential information regarding Zuffa's athlete contracts and strategies, event-level financial and other information, trade secret strategy information, and third-party confidential information. Release of this information is likely to cause Zuffa and third parties significant competitive harm. The Court previously granted Zuffa's motion to seal this report (ECF No. 533).
3	Supplemental Expert Report of Hal J. Singer, Ph.D. (April 3, 2018)	This report contains highly confidential and sensitive Zuffa financial information. Release of this information is likely to cause Zuffa significant competitive harm.
4	Second Supplemental Reply Report of Hal J. Singer, Ph.D. (May 28, 2018)	This report contains highly confidential and sensitive Zuffa trade secret financial information. Release of this information is likely to cause Zuffa significant competitive harm.
5	Expert Report of Andrew Zimbalist in <i>Cung Le, et al. v. Zuffa, LLC</i> (August 30, 2017)	This report contains highly confidential information regarding Zuffa's athlete contracts and strategies and Zuffa financial information. Release of this information is likely to cause Zuffa significant competitive harm. The Court previously granted Zuffa's motion to seal this report (ECF No. 533).
6	Expert Rebuttal Report of Andrew Zimbalist (December 26, 2017)	This report contains highly confidential information regarding Zuffa's athlete contracts and strategies and Zuffa financial information. Release of this information is likely to cause Zuffa significant competitive harm. The Court previously granted Zuffa's motion to seal this report (ECF No. 533).
8	Expert Report of Guy A. Davis, CPA, CIRA, CDBV, CFE (August 31, 2017)	This report contains highly confidential information regarding Zuffa's detailed financial information, release of which is likely to cause Zuffa significant competitive harm. The Court previously granted Zuffa's motion to seal this report (ECF No. 533).

<b>Table B: Expert Reports Zuffa Seeks to File under Seal</b>		
<b>Ex.</b>	<b>Description</b>	<b>Justification</b>
9	Expert Report of Professor Robert H. Topel (October 27, 2017) (excerpted)	The excerpts of this report contain highly confidential information regarding Zuffa's athlete contracts and strategies, event-level financial and other information, trade secret strategy information, and third-party confidential information. Release of this information is likely to cause Zuffa and third parties significant competitive harm. The Court previously granted Zuffa's motion to seal this report (ECF Nos. 533).
10	Expert Report of Paul Oyer (October 27, 2017) (excerpted)	The excerpts of this report contain information regarding Zuffa's highly confidential financial and athlete contract information, release of which would be likely to cause Zuffa significant competitive harm. The Court previously granted Zuffa's motion to seal this report (ECF Nos. 533).

10           I.       Zuffa's Highly Confidential And Commercially Sensitive Information Regarding  
 11           Agreements With Athletes Is Properly Filed Under Seal.

12           Zuffa's promotional and other athlete agreements contain "specific contractual terms,  
 13 financial payments, benefits and obligations negotiated with an athlete." ECF No. 349-1 ¶ 8  
 14 (Decl. of Nicholas A. Widnell ("Widnell Decl.")) . Zuffa's executives and employees keep this  
 15 contractual and financial information, which includes individual compensation information,  
 16 private and confidential. ECF No. 565-3 (Decl. of Wm. Hunter Campbell ("Campbell Decl."))  
 17 ¶ 3. Zuffa works diligently to keep its promotional agreements and athlete contracts—both  
 18 executed and in draft form—confidential. *Id.* ¶ 6. Zuffa does this *inter alia* to prevent its  
 19 competitors from simply copying its contracts or combining that information with other highly  
 20 confidential financial information to copy or undermine Zuffa's successful business model. *Id.*

21           A.       The Ninth Circuit And Several District Courts, Including This Court, Have Held That  
 22           Sealing This Type Of Information Is Appropriate Under the "Compelling Reasons"  
 23           Standard.

24           The Ninth Circuit has held that this information is properly filed under seal. *E.g., In re*  
*Elec. Arts, Inc.*, 298 F. App'x 568, 569 (9th Cir. 2008) (finding compelling reasons to seal  
 25 categories of information including pricing terms, royalty rates, guaranteed minimum payment  
 26 terms, trade secret information, and business information that, if released, might cause  
 27 competitive harm). The Ninth Circuit has adopted the Restatement of Torts definition of "trade

1 secret” as “any formula, pattern, device or compilation of information which is used in one’s  
 2 business, and which gives him an opportunity to obtain an advantage over competitors who do  
 3 not know or use it.” *Clark v. Bunker*, 453 F.2d 1006, 1008-09 (9th Cir. 1972) (finding that a  
 4 “detailed plan for the creation, promotion, financing and sale of contracts” constitutes a trade  
 5 secret); *see also In re Elec. Arts, Inc.*, 298 F. App’x at 569. District courts within this District and  
 6 Circuit have explained that “[w]here the material includes information about proprietary business  
 7 operations, a company’s business model or agreements with clients, there are compelling reasons  
 8 to seal the material because possible infringement of trade secrets outweighs the general public  
 9 interest in understanding the judicial process.” *Selling Source, LLC v. Red River Ventures, LLC*,  
 10 No. 2:09-cv-01491-JCM-GWF, 2011 WL 1630338, at \*6 (D. Nev. Apr. 29, 2011); *see also In*  
 11 *re ConAgra Foods, Inc.*, No. CV 11-05379-MMM (AGRx), 2014 WL 12577133, at \*4 (C.D. Cal.  
 12 Dec. 29, 2014) (citing cases) (“Courts routinely find that the risk of competitive harm arising  
 13 from the public disclosure of internal business documents constitutes a compelling reason that  
 14 justifies sealing”).

15 Agreements, including agreements that contain specific information regarding how a party  
 16 engages the services of a third party, are properly filed under seal under the “compelling reasons”  
 17 standard as “competitors could use this information to adjust their own contracts,” thereby  
 18 undermining a party’s “ability to compete.” *Stout v. Hartford Life & Acc. Ins. Co.*, No. CV 11-  
 19 6186 CW, 2012 WL 6025770, at \*2 (N.D. Cal. Dec. 4, 2012) (citations omitted). Zuffa’s  
 20 agreements with athletes—and, in particular, any draft contracts and negotiation  
 21 communications—also meet the “compelling reasons” standard because as intense negotiations  
 22 frequently take place for MMA athlete services between Zuffa and its competitors, Campbell  
 23 Decl. ¶ 5, “disclosing the terms of these agreements would put [Zuffa] at a disadvantage in future  
 24 negotiations for similar agreements.” *Icon-IP Pty Ltd. v. Specialized Bicycle Components, Inc.*,  
 25 No. 12-CV-03844-JST, 2015 WL 984121, at \*3 (N.D. Cal. Mar. 4, 2015).

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28

1                   B. Zuffa Has Provided Evidence Demonstrating That Athlete Contractual Information Is  
 2                   Highly Sensitive And Disclosure Of That Information Would Cause Zuffa Significant  
 3                   Competitive Harm.

4                   Disclosure of Zuffa’s promotional agreements, which contain specific financial terms,  
 5                   benefits, and obligations negotiated with an athlete, would “provide competitors with unfair and  
 6                   damaging insights into Zuffa’s business practices.” Campbell Decl. ¶¶ 3, 5-6 (disclosure of “the  
 7                   amounts and benefits Zuffa is willing to offer an athlete – in addition to information regarding  
 8                   Zuffa’s negotiation strategy and tactics – could and would be used by competitors to gain an  
 9                   advantage in negotiations with such athletes”).

10                  There is no dispute that other MMA promoters are aware of the significant competitive  
 11                  risks and harms they face if confidential athlete agreements were released publicly. For example,  
 12                  Bellator’s counsel and President both have described the competitive harm that would occur if  
 13                  athlete contract information was released publicly to this Court. Bellator’s President stated that  
 14                  “if individual athlete contract information were provided to Bellator’s competitors, they would be  
 15                  able to anticipate Bellator’s recruitment strategies, outflanking its ability to sign the best fighters,  
 16                  anticipating strategies in each respective weight class and geographic market, and compromising  
 17                  its strategic plans to develop the best overall promotion.” *Le v. Zuffa*, 17-cv-00849-RFB-PAL,  
 18                  ECF No. 1-3 (Decl. of Bellator President Scott Coker at ¶ 15) (“Coker Decl.”). Bellator’s counsel  
 19                  has explained to this Court that any information—*e.g.*, individual athlete contracts—that would  
 20                  permit a “Bellator fighter [to be] compared to this fighter, they’re disclosing our information,”  
 21                  which he characterized as “a very significant concern.” ECF No. 438, June 1, 2017 Hearing Tr.  
 22                  16:16-21.

23                  C. Disclosure of Athlete Contracts Would Invade The Privacy Interests Of Third Parties  
 24                  And Potentially Harm Athletes’ Interests.

25                  The terms of Zuffa’s contracts with athletes detailing their contractual responsibilities to  
 26                  Zuffa and vice-versa as well as the compensation Zuffa is to pay to those athletes are properly  
 27                  filed under seal for the same reasons—they define a third party’s rights, responsibilities, and  
 28                  compensation for fulfilling those responsibilities. *Icon-IP Pty Ltd.*, 2015 WL 984121, at \*3  
 29                  (granting a motion to seal regarding invoice and payment information in addition to “information  
 30                  about assignments and consulting and license agreements between a third party consultant” and

1 the party moving to seal under the “compelling reasons” standard because “release of that  
 2 information would result in an invasion of the third party’s privacy” and “would result in an  
 3 invasion of the privacy of the third party consultants” at issue).

4         Indeed, many athletes do not want the terms of their contracts to be publicly released and  
 5 for some, release of that information—in particular compensation information—would threaten  
 6 the safety of the athletes and their families. ECF No. 589-1, Decl. of Ali Abdelaziz ¶¶ 4-5. “The  
 7 privacy interests of innocent third parties should weigh heavily in a court’s balancing opinion” of  
 8 access to judicial records. *United States v. Amodeo*, 71 F.3d 1044, 1050 (2d Cir. 1995) (citation  
 9 and quotation marks omitted). Zuffa’s employees have also received requests from athletes to  
 10 keep their draft and final contracts—in addition to compensation information—strictly  
 11 confidential for privacy or safety reasons. Campbell Decl. ¶ 8. Consistent with athlete  
 12 commission rules and applicable laws, Zuffa employees use their best efforts to respect these  
 13 requests. *Id.*

14                  D. Courts Have Already Held That Athlete Contracts Are Properly Filed Under Seal  
 15                  Under The Compelling Reasons Standard.

16         This Court has already held that Zuffa’s contracts with athletes and other related business  
 17 documents that contain financial terms meet the compelling reasons standard for sealing. ECF  
 18 Nos. 495, 504. In addition, Magistrate Judge Hoffman, in another case in this District, has found  
 19 Zuffa’s athlete agreements are properly filed under seal under the “compelling reasons” standard.  
 20 Judge Hoffman found that several of Zuffa’s agreements with one of its athletes were properly  
 21 sealed under *Kamakana*’s “compelling reasons” standard. *Hunt v. Zuffa, LLC*, Case No. 2:17-cv-  
 22 00085-JAD-CWH (D. Nev. Aug. 20, 2018), ECF No. 140 at 1-2. In granting Zuffa’s request,  
 23 Judge Hoffman noted Zuffa’s claim that “the agreement contain proprietary information, and that  
 24 public disclosure would harm Zuffa’s contractual relationships with other fighters and its  
 25 competitive standing with MMA promoters.” *Id.* at 2. Judge Hoffman concluded that Zuffa has  
 26 “identified compelling reasons that warrant sealing” the agreements and a related portion of a  
 27 brief. *Id.*

28

**II. Documents Containing Detailed Analysis Of Zuffa's Financial And Revenue Information Are Properly Filed Under Seal.**

Zuffa moves to seal the exhibits and portions of Plaintiffs' Opposition that contain detailed analysis of Zuffa financial and revenue information, including individual athlete and event-level information, as well as Zuffa's confidential financial records, revenue, internal valuations, and compensation. This Court has previously sealed Zuffa's financial information under the "compelling reasons" standard. ECF No. 495, 504.

Zuffa is a privately owned corporation. It does not publicly report its revenue, expense, compensation, and other financial information on a yearly, quarterly, or event-by-event basis. ECF No. 565-3, Campbell Decl. ¶ 4. Zuffa, its executives, and its employees maintain the confidentiality of its financial and revenue information—including revenue and compensation information, both on an individual and aggregate level—private and confidential. *Id.* ¶ 3. Zuffa considers its event-level financials, including compensation and spending information, highly confidential. *Id.*

Zuffa’s financial information is highly sensitive, and releasing this information publicly would put Zuffa at risk of competitive harm because other MMA promoters could try to use Zuffa’s confidential financial information to their advantage. *Id.* ¶ 3 (explaining that release of this “highly sensitive business information” would permit “competitors to have a tactical advantage over Zuffa in negotiations with venues, sponsors, athletes, and others”); Decl. of Stacey K. Grigsby in Support of Zuffa’s Motion to Seal Plaintiffs’ Opposition (“Grigsby Decl.”) ¶ 6. Other courts in this district have also held that compelling reasons exist to seal these categories of information. *Selling Source, LLC v. Red River Ventures, LLC*, No. 2:09-cv-01491-JCM-GWF, 2011 WL 1630338, at \*6-7 (D. Nev. Apr. 29, 2011) (finding compelling reasons to seal “detailed information regarding Selling Source’s business operations, customer agreements, corporate structure, the details of Selling Source’s customer base and how the company works with and licenses products to its customers and measures it takes to protect its intellectual property,” including the “Master Service Agreement” and “License Agreement”); *Bartech Int’l, Inc. v. Mobile Simple Sols., Inc.*, No. 2:15-cv-02422-MMD-NJK, 2016 WL 2593920, at \*3 (D.

1 Nev. May 5, 2016) (finding compelling reasons to seal “account list” that “evidences the terms of  
 2 numerous agreements, reveals revenue figures, and lists technical information regarding each  
 3 contract,” as well as “business plan created by Plaintiff for a specific client”); *J.M. Woodworth*  
 4 *Risk Retention Grp., Inc. v. Uni-Ter Underwriting Mgmt. Corp.*, No. 2:13-cv-00911-JAD-PAL,  
 5 2014 WL 12769806, at \*1–2 (D. Nev. May 20, 2014) (finding compelling reasons to seal  
 6 documents “that contain proprietary and confidential information about the corporate structure  
 7 and internal governance of Plaintiff’s business”) (Leen, J.)

8 Zuffa is not the only MMA promoter with this concern. That Bellator designated all of its  
 9 quarterly financial data as highly confidential—the most protected designation—under the  
 10 Protective order only underscores the sensitivity of this type of information. As Counsel for  
 11 Bellator explained, event-level specific financial documents are among the “most sensitive  
 12 documents” to Bellator. ECF No. 438, June 1, 2017 Hearing Tr. 39:11-15 (describing event-level  
 13 profit-and-loss statements for individual fights (or bouts) as “the most sensitive documents”).

14 The Federal Circuit, applying Ninth Circuit law, has held that “detailed product-specific  
 15 financial information” may be properly filed under seal where a company “could suffer  
 16 competitive harm if [the] information is made public,” including providing “suppliers an  
 17 advantage in contract negotiations” which would put the company “at a competitive disadvantage  
 18 compared to their current position.” *Apple Inc. v. Samsung Elecs. Co.*, 727 F.3d 1214, 1225 (Fed.  
 19 Cir. 2013). “[D]etailed product-specific” information properly filed under seal includes “costs,  
 20 sales, profits, and profit margins.” *Id.* at 1224-25. The Federal Circuit further held that reports  
 21 with “information that [a company’s] competitors could not obtain anywhere else,” even where  
 22 those competitors could attempt to replicate that information, meet the compelling reasons  
 23 standard for sealing. *Id.* at 1228.

24 Zuffa’s detailed financial information is properly filed under seal. This includes Zuffa’s  
 25 wage share information—detailed event-by-event information comparing Zuffa’s event revenue  
 26 to the amount of compensation paid to athletes competing in that event. Wage share information  
 27 is properly sealed because it is a compilation of information regarding Zuffa’s “volume of

28

1 business” and highly confidential trends (and sales) in Zuffa’s business. *Del Campo v. Am.*  
 2 *Corrective Counseling Servs., Inc.*, No. C-01-21151 JW (PVT), 2007 WL 902568, at \*5 (N.D.  
 3 Cal. Mar. 22, 2007) (citing *Walker v. University Books, Inc.*, 602 F.2d 859, 865 n.2 (9th Cir.  
 4 1979)). As Zuffa has previously explained at length, detailed wage share information—whether  
 5 used on its own or in conjunction with regression analysis—would provide competitors with  
 6 unearned insights into Zuffa’s investment, expense, and spending decisions, which would permit  
 7 them to have a “roadmap” to Zuffa’s business and allow those competitors to cause competitive  
 8 harm to Zuffa for their benefit. ECF No. 565, Zuffa’s Reply in Supp. of Mot. to Seal Pls.’ Class  
 9 Cert Reply at 5-6.

10 In addition, it is the *combined effect* of the disclosure of detailed financial information that  
 11 is important in evaluating whether sealing under the compelling reasons standard is appropriate.<sup>1</sup>  
 12 *Del Campo* and the Ninth Circuit *Walker* decision hold that if competitors could successfully use  
 13 the various pieces of a business’s proprietary information to more effectively compete, then that  
 14 information may constitute a trade secret. Further, in *Apple Inc.*, the Federal Circuit considered  
 15 the *combined effect* of disclosing separate pieces of business information. *Id.* at 1225 (“If  
 16 Apple’s and Samsung’s suppliers have access to their profit, cost, and margin data, it could give  
 17 the suppliers an advantage in contract negotiations, which they could use to extract price  
 18 increases for components. This would put Apple and Samsung at a competitive disadvantage  
 19 compared to their current position”) (internal citation omitted). In sum, sealing under the  
 20 compelling reasons is appropriate for Zuffa’s financial, revenue, and related information.

21 III. Zuffa’s Trade Secret Business Information And Highly Confidential Business  
Communications And Strategy Are Properly Filed Under Seal.

22 Zuffa moves to seal the exhibits and portions of Plaintiffs’ Opposition that contain trade  
 23 secret business information and highly confidential and sensitive business communications  
 24 strategy. This information includes Zuffa’s highly confidential marketing and business strategy  
 25

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26 <sup>1</sup> In granting a motion to seal trade secret information, the *Del Campo* court recognized that  
 27 binding precedent holds that “one factor in determining whether information is a trade secret is  
 28 the ease or difficulty with which the information could be properly acquired or duplicated by  
 others.” 2007 WL 902568, at \*5 (citing *Walker*, 602 F.2d at 856 n.2).

1 related to Zuffa's business in the United States and abroad. It also includes contract, payment and  
 2 negotiation strategies relating to Zuffa and non-Zuffa MMA athletes, as well as other business  
 3 partners that Zuffa works diligently to keep confidential. Campbell Decl. ¶¶ 5, 7.

4 This information is highly sensitive for Zuffa, as public disclosure of this information  
 5 would be likely to provide competitors with unfair and damaging insights into Zuffa's business  
 6 practices, including providing those competitors with unearned competitive advantages. *Id.* ¶¶ 5,  
 7. Compelling reasons exist to seal the exhibits and portions of Plaintiffs' Opposition containing  
 8 trade secret business information. Grigsby Decl. ¶ 8; *see also id.* ¶¶ 6-7.

9 This type of trade secret business strategy information is properly filed under seal under  
 10 the compelling reasons standard. *See, e.g., In re Elec. Arts, Inc.*, 298 F. App'x at 569 (compelling  
 11 reasons exist to seal categories of information including trade secret and business information  
 12 that, if released, might cause competitive harm); *Selling Source*, 2011 WL 1630338, at \*6-7  
 13 (finding compelling reasons to seal "detailed information regarding Selling Source's business  
 14 operations," in addition to "the details of Selling Source's customer base and how the company  
 15 works with and licenses products to its customers and measures it takes to protect its intellectual  
 16 property"); *Bartech Int'l, Inc.*, 2016 WL 2593920, at \*3 (finding compelling reasons to seal the  
 17 "business plan created by Plaintiff for a specific client"). As the Federal Circuit, applying Ninth  
 18 Circuit law, held compelling reasons exist to seal data and information that competitors "could  
 19 not obtain anywhere else," including, for example, marketing survey information that could give  
 20 a company a "competitive advantage" by permitting that company to be the first to "introduce  
 21 products with new features." *Apple*, 727 F.3d at 1128. Release of this type of information could  
 22 provide, as the Federal Circuit explained, a "head-start" on the company's strategy and would  
 23 therefore "provide them with an enormous benefit" to the company's detriment. *Id.*

24 IV. Information Designated Confidential By A Third Party That Is Likely To Cause  
Competitive Harm And Exhibits Containing Third Party Trade Secret And Similar  
Information Is Properly Filed Under Seal.

25 Zuffa seeks to file under seal certain exhibits designated as confidential by a Third Party  
 26 that contain highly sensitive and confidential information and that would be likely to cause  
 27

1 significant competitive harm if released publicly, exhibits containing third party trade secrets  
 2 likely to cause competitive harm, as well as corresponding portions of Plaintiffs' Opposition  
 3 describing or containing such information. These exhibits include third-party contracts and  
 4 testimony that includes information about third party contracts, communications, or financial  
 5 terms or was designated by Plaintiffs as confidential. Zuffa also seeks to seal exhibits containing  
 6 redactions of the private information of individuals, such as social security numbers. Compelling  
 7 reasons exist to seal the information, especially third-party contract and financial documents,  
 8 certain other exhibits that contain Zuffa or third parties' trade secret or commercially sensitive  
 9 information, and redactions for individual privacy. Disclosure of this information is likely to  
 10 cause competitive harm or harm from invasion of privacy to third parties to this suit. Grigsby  
 11 Decl. ¶10

12       V.     Portions Of The Expert Reports Are Properly Filed Under Seal Under The Compelling  
Reasons Standard.

13       The expert reports lodged as Exhibits to Plaintiffs' Opposition are properly filed under  
 14 seal. The expert reports contain quotations from and analysis and descriptions of the highly  
 15 confidential Zuffa and third party information described above and described in Zuffa's previous  
 16 sealing motions related to these reports, ECF Nos. 525, 552 and 577. Public disclosure of this  
 17 information would be likely to cause Zuffa competitive harm. Grigsby Decl. ¶ 9; *see also* Coker  
 18 Decl. ¶ 15; ECF No. 438, June 1, 2017 Hearing Tr. 16:16-21, 39:11-15 (Bellator's counsel  
 19 describing the sensitivity of event-level profit-and-loss statements and athlete contract  
 20 information).

21       VI.    Zuffa Has Narrowly Tailored Its Sealing Requests And Hereby Files Certain Exhibits  
Publicly.

23       Zuffa has agreed to file the exhibits listed below publicly in whole or in part. In support  
 24 of its efforts to narrowly tailor its sealing requests, counsel for Zuffa spent many hours reviewing  
 25 Plaintiffs' Opposition in addition to all of the exhibits Plaintiffs lodged under seal to determine  
 26 whether public filing was appropriate for each exhibit. Grigsby Decl. ¶ 11. As a result of its  
 27 review, Zuffa will file 25 exhibits publicly in full or in part. Each of the exhibits that Zuffa seeks  
 28

1 to file under seal is included as exhibits to the Grigsby Declaration. While certain exhibits are  
2 filed publicly in full, for any publicly-filed exhibits with redactions, the reasons supporting those  
3 redactions are provided above.

4 **CONCLUSION**

5 For the foregoing reasons, Zuffa respectfully requests that the Court find that compelling  
6 reasons exist to seal the exhibits described herein and the portions of Plaintiffs' Opposition  
7 reflecting the contents of such exhibits.

8 Dated: October 3, 2018

9 Respectfully Submitted,

10 BOIES SCHILLER FLEXNER LLP

11 By: /s/ Stacey K. Grigsby  
12 Stacey K. Grigsby

13 WILLIAM A. ISAACSON (*Pro hac vice*)  
14 (wisaacson@bsflp.com)  
15 STACEY K. GRIGSBY (*Pro hac vice*)  
16 (sgrigsby@bsflp.com)  
17 NICHOLAS A. WIDNELL (*Pro hac vice*)  
18 (nwidnell@bsflp.com)  
19 BOIES SCHILLER FLEXNER LLP  
20 1401 New York Ave., NW, Washington, DC 20005  
21 Telephone: (202) 237-2727; Fax: (202) 237-6131

22 RICHARD J. POCKER #3568  
23 (rpocker@bsflp.com)  
24 BOIES SCHILLER FLEXNER LLP  
25 300 South Fourth St., Ste. 800, Las Vegas, NV 89101  
26 Telephone: (702) 382 7300; Fax: (702) 382 2755

27 DONALD J. CAMPBELL #1216  
28 (djc@campbellandwilliams.com)  
J. COLBY WILLIAMS #5549  
(jcw@campbellandwilliams.com)  
CAMPBELL & WILLIAMS  
700 South 7th Street, Las Vegas, NV 89101  
Telephone: (702) 382-5222; Fax: (702) 382-0540

Atorneys for Defendant Zuffa, LLC, d/b/a  
Ultimate Fighting Championship and UFC

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the foregoing Zuffa, LLC's Motion to Seal Plaintiffs' Opposition to Zuffa's Motion for Summary Judgment (ECF No. 596) was served on October 3, 2018 via the Court's CM/ECF electronic filing system addressed to all parties on the e-service list.

/s/ Roderick J. Crawford

Roderick J. Crawford, an Employee of  
Boies Schiller Flexner LLP